

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JACK LECK II,

Petitioner,

V.

DEPARTMENT OF CORRECTIONS et al.,

Respondents.

CASE NO. 3:15-CV-05869-RJB-JRC

ORDER SUBSTITUTING
RESPONDENT AND ORDER
DIRECTING SERVICE AND
RETURN, § 2254 PETITION

The District Court has referred this petition for a writ of habeas corpus to United States Magistrate Judge J. Richard Creature. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR3 and MJR4.

Petitioner Jack Leck II filed a petition for writ of habeas corpus naming the Department of Corrections, Washington Attorney General and Kitsap County Prosecutors Office as respondents. Dkt. 7. The proper respondent to a habeas petition is the “person who has custody over [the petitioner].” 28 U.S.C. § 2242; see also § 2243; *Brittingham v. United States*, 982 F.2d 378 (9th Cir. 1992); *Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir. 1989). According to his

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1 petition, petitioner is currently housed at the Special Commitment Center (“SCC”). The CEO of
2 the SCC is Mark Strong. Accordingly, the Clerk of Court is directed to substitute Mark Strong as
3 the respondent in this action.

4 Further, the Court, having reviewed petitioner’s federal habeas petition (Dkt. 7), hereby
5 finds and ORDERS as follows:

6 (1) The Clerk shall arrange for service by certified mail upon respondent and upon
7 the Attorney General of the State of Washington, of copies of the petition, of all documents in
8 support thereof, and of this Order. The Clerk shall also direct a copy of this Order and of the
9 Court’s *pro se* instruction sheet to petitioner.

10 (2) Within **forty-five (45) days** after such service, respondent(s) shall file and serve an
11 answer in accordance with Rule 5 of the Rules Governing Section 2254 Cases in United States
12 District Courts. As part of such answer, respondent(s) shall state whether petitioner has
13 exhausted available state remedies and whether an evidentiary hearing is necessary.
14 Respondent(s) shall not file a dispositive motion in place of an answer without first showing
15 cause as to why an answer is inadequate. Respondent(s) shall file the answer with the Clerk of
16 the Court and serve a copy of the answer on petitioner.

17 (3) The answer will be treated in accordance with LCR 7. Accordingly, on the face
18 of the answer, respondent(s) shall note it for consideration on the fourth Friday after filing.
19 Petitioner may file and serve a response not later than the Monday immediately preceding the
20 Friday designated for consideration of the matter, and respondent(s) may file and serve a reply
21 not later than the Friday designated for consideration of the matter.

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1 (4) Filing by Parties, Generally

2 All attorneys admitted to practice before this Court are required to file documents
3 electronically via the Court's CM/ECF system. All non-attorneys, such as *pro se* parties and/or
4 prisoners, may continue to file a paper original with the Clerk. All filings, whether filed
5 electronically or in traditional paper format, must indicate in the upper right hand corner the
6 name of the magistrate judge to whom the document is directed.

7 For any party filing electronically, when the total of all pages of a filing exceeds fifty
8 (50) pages in length, a paper copy of the document (with tabs or other organizing aids as
9 necessary) shall be delivered to the Clerk's Office for chambers. The chambers copy must be
10 clearly marked with the words "Courtesy Copy of Electronic Filing for Chambers."

11 Any document filed with the Court must be accompanied by proof that it has been served
12 upon all parties that have entered a notice of appearance in the underlying matter.

13 (5) Motions

14 Any request for court action shall be set forth in a motion, properly filed and served.
15 Pursuant to LCR 7(b), any argument being offered in support of a motion shall be submitted as a
16 part of the motion itself and not in a separate document. The motion shall include in its caption
17 (immediately below the title of the motion) a designation of the date the motion is to be noted for
18 consideration on the Court's motion calendar.

19 (6) Direct Communications with District Judge or Magistrate Judge

20 No direct communication is to take place with the District Judge or Magistrate Judge with
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1 regard to this case. All relevant information and papers are to be directed to the Clerk.

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3 Dated this 5th day of January, 2016.

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J. Richard Creatura
United States Magistrate Judge